

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Qwest Communications)	WC Docket No. 03-11
International, Inc.)	
)	
Consolidated Application for Authority)	
to Provide In-Region, InterLATA Services)	
in New Mexico, Oregon, and)	
South Dakota)	

COMMENTS OF INTEGRA TELECOM OF OREGON, INC.

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Dated: February 5, 2003

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Integra Telecom of Oregon, Inc. (“Integra”) submits these comments concerning the above-captioned Consolidated Application of Qwest Communications International, Inc. (“Qwest”) for authority to provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota filed January 15, 2003 (“Application”).¹ Integra is headquartered in Beaverton, Oregon, and provides competitive local exchange and long distance services in Oregon.

Qwest has made substantial progress in Oregon toward meeting the competitive checklist requirements of Section 271 of the Telecommunications Act of 1996 (“Telecom Act”). However, Qwest is using “bait and switch” tactics in Oregon with regard to the unbundled network element (“UNE”) pricing for loops that Qwest charges its competitors, proclaiming its compliance with checklist item 2 based upon its current Oregon UNE loop rates while at the same time vigorously trying to obtain very substantial increases to those rates. Qwest should not be granted section 271 authority in Oregon unless the Commission requires Qwest to maintain its

¹ *Comments Requested on the Application By Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Service in New Mexico, Oregon, and South Dakota*, Public Notice, WC Docket No. 03-11, DA 03-125, released January 15, 2003.

UNE loop rates at levels no higher than the rates it relies upon in this proceeding for some minimum period of time.

In this Application, Qwest argues that its current Oregon loop rates, set by the Oregon Public Utility Commission in 1997, comply with TELRIC,² and as further evidence of TELRIC compliance, offers testimony that the average Oregon loop rate is less than the Colorado benchmarked loop rate for Oregon.³ Meanwhile, as the Commission considers Qwest's 271 application for Oregon based on Qwest's current loop rates, Qwest is attempting to get the Oregon Public Utility Commission to increase the rates for its unbundled loops by a *very substantial* amount.⁴ Integra cannot state the precise amount, because Qwest requested and was granted a Protective Order in the ongoing *Oregon UNE Rate Proceeding*, which permits Qwest to cover the UNE cost studies it filed in that ongoing case with the convenient cloak of confidentiality.

This is not the first time Qwest has applied for section 271 authority for a state while a rate proceeding was pending in that state, nor is this the first time a CLEC has complained about such. As the Commission discussed in its recently-issued *Qwest 2002 Consolidated 271 Order*,⁵ on July 2, 2002 - just prior to Qwest's filing its initial section 271 application for Utah - Qwest reduced Utah UNE rates. AT&T complained that the UNE rate reductions Qwest had made in Utah just prior to filing its section 271 application were only temporary, for purposes of

² Application at 149.

³ Application, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Oregon ("*Thompson Oregon Declaration*"), ¶¶ 19-22.

⁴ *In the Matter of the Investigation to Review Costs and Establish Prices for Unbundled Network Elements provided by Qwest Corporation*, Oregon Public Utility Commission Docket No. UM 1025, opened August 7, 2001 ("*Oregon UNE Rate Proceeding*").

⁵ *Application By Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, (rel. December 23, 2002) ("*Qwest 2002 Consolidated 271 Order*") at ¶ 306.

obtaining section 271 approval, and that Qwest would subsequently raise them to their previous, non-TELRIC-compliant levels. A little over a week before filing the reduced Utah UNE rates, on June 21, 2002, Qwest had submitted direct testimony asking the Utah Commission to set UNE rates “at the same levels as the rates that were in place prior to the [July 2] reductions” (as described by AT&T). The Commission did not find that Qwest’s rates for Utah were impermissibly temporary nor did it deny Qwest’s 271 application for Utah.

Once again, Qwest is asking for section 271 authority based upon one set of UNE loop rates while simultaneously doing its utmost to rid itself of the obligation to offer services at those rates as soon as possible. During consideration of its Utah section 271 application, Qwest sought (in the concurrent state proceeding) to go back to rates at the same levels as existed prior to its eleventh hour, pre-271-filing-rate-reduction. In Oregon, Qwest is seeking to *substantially increase* current UNE loop rates that barely meet the Commission’s benchmark test now, according to Qwest’s own application of the benchmark test.⁶

The current Oregon UNE rates are based upon old data - input gathered between 1993 and 1997, when competitive interconnection was in its infancy.⁷ Qwest’s current Oregon average UNE loop rate is less than the Colorado benchmarked average loop rate for Oregon, but only by a few cents.⁸

Integra recognizes that any ILEC’s UNE rates may require change over time, and that just the existence of an ongoing state rate proceeding would not warrant denial of section 271 authority in most cases. Integra also understands, as the Commission discussed in its *Qwest*

⁶ *Thompson Oregon Declaration*, ¶ 22.

⁷ *Oregon UNE Rate Proceeding*, Order No. 02-602 (September 3, 2002), Appendix A at 2.

⁸ The Oregon average loop rate is \$15.00; the Colorado benchmarked rate for Oregon is \$15.36. *Thompson Oregon Declaration*, ¶ 22.

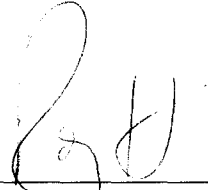
2002 Consolidated 271 Order, that mechanisms exist to suspend or revoke section 271 authority after it has been granted, should an ILEC cease to meet the requirements for 271 approval.

There, in its analysis of the effect of the pending Utah rate investigation, the Commission noted its authority to review future, post-271 approval UNE rate increases and, upon determining that such increases are not TELRIC-based, to take appropriate action, to include the suspension or revocation of previously-granted section 271 authority.⁹ However, Integra believes that there is an articulable difference between the possibility of an ILEC gradually “backsliding” on some section 271 checklist item in the future, and an ILEC’s energetically seeking *to substantially increase UNE loop rates over the current and the benchmarked rate* in front of the state commission at the very same time that it is asking the FCC for 271 authority based on its *much* lower, current UNE rates. The former - ILEC post-271 “backsliding” on any of the numerous checklist items - is appropriately dealt with through the Commission’s “enforcement of 271 conditions” powers under 47 U.S.C. § 271(d)(6). However, the latter - Qwest’s right hand proclaiming checklist item 2 section 271 compliance based on one set of rates while Qwest’s left hand is trying to increase those rates, not just to previous levels, but to raise them to new, sky-high levels – is more appropriately dealt with now, in the 271 proceeding itself. Qwest’s actively seeking to raise its Oregon UNE loop rates to a “secret” level which would take the loop rate way, way above the current UNE loop rate as well as the Colorado benchmarked rate for Oregon during the pendency of this proceeding surely exceeds the tolerable level of administrative gamesmanship.

⁹ “Section 271 provides a mechanism, section 271(d)(6)(B), to challenge any UNE rates as not being TELRIC-based. Under section 271(d)(6)(A), the Commission has the authority to review future Qwest rate increases and, upon determining that such increases are not TELRIC-based in compliance with checklist item two, the Commission

For the foregoing reasons, Integra urges the Commission to, at a minimum, as part of any grant of section 271 authority for Oregon, require that Qwest's UNE loop rates be no higher than those it can justify in this 271 application for some minimum period of time.

Respectfully submitted,



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may suspend or revoke Qwest's section 271 authority or impose other penalties." *Qwest 2002 Consolidated 271 Order* at ¶ 307.